IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2459 OF 2006

Pandharinath Bapu Patil and others ...Petitioners

vs.

Keshav Shivram Patil and others ...Respondents

Mr.Anilkumar Patil for the Petitioners
Mr.R.A.Karale for Respondent Nos.1 to 9.

CORAM: A.S.OKA,J.
DATE : JUNE 26, 2007.

P.C.:

1. Heard the Advocate for the Petitioners. The Petitioners are the Defendants in a suit for injunction. An application for temporary injunction was filed by the original Plaintiff which was rejected by the trial court. In an Appeal preferred by the original Plaintiff, the order impugned dated 6th January 2006 has been passed. The learned District Judge found that there was a dispute between the parties as regards the boundaries of the immoveable property. He, therefore, directed the Taluka Inspector of Land Records (for short T.I.L.R.), Bhiwandi to carry out a survey and demarcation. The learned Judge granted liberty to the original Plaintiff to take out a fresh application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure,1908 after the report of T.I.L.R. was received.

2. The submission of the learned Advocate for the Petitioners is that there is no prayer made by any of the parties before

the Appellate Court for appointment of T.I.L.R. as a Court Commissioner. He submitted that the trial court had rejected the prayer made for temporary injunction on merits and without disturbing the prima facie findings recorded by the Trial Court, the Appellate court could not have granted a liberty to the Plaintiffs to take out a fresh application. He submitted that the order passed by the Appellate Court travels beyond the limited scope of the Appeal from Order which was before the Appellate Court. The Advocate for the original Plaintiffs stated that the T.I.L.R has already carried out the work and a report has been submitted.

3. I have considered the submissions. The rights of the Petitioners are not affected in any manner by the direction issued by the Appellate Court to the T.I.L.R for carrying out the survey and demarcation. The Petitioners can always raise an objection to the report of the T.I.L.R and the map prepared by him and can always examine the T.I.L.R on oath before the Trial Court.

4. While passing the impugned order, the learned District Judge has approved the observations made by the trial court that the original Defendant Nos.1 to 3 have claimed that they have already made the construction and no useful purpose will be served by granting injunction restraining the Defendant nos.1 to 3 from carrying out any construction work over the

suit property. The learned District Judge has specifically recorded that he was not inclined to interfere with the view expressed by the Trial Court. All that is done by the impugned order is that the original Plaintiffs have been permitted to file a fresh application for injunction in the light of the report submitted by the Commissioner. It is obvious that even if the fresh application is made, the same will be considered in the light of what has been observed by the Appellate Court in the impugned order.

5. Subject to what is stated above, no case is made out for interference in a Petition under Article 227 of Constitution of India. Subject to what is stated above, Writ Petition is rejected.

JUDGE